Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-13

ANTOINETTE FOSTER, Appellant,

V.

COUNTY SCHOOL BOARD
of
PRINCE WILLIAM COUNTY

Appellee,

ON APPEAL FROM THE
SUPREME COURT OF VIRGINIA

MOTION TO DISMISS OR AFFIRM

E. Ralph Coon, Jr.
Craig D. Johnston
Coon & Johnston
P. O. Box 530
Manassas, VA 22110

July 24, 1979

Counsel for Appellee

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The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Virginia on the ground that it does not present a

substantial federal question or in the alternative that the judgment herein rests on an adequate non-federal basis.

I.

THE STATE CONSTITUTION AND STATUTES INVOLVED AND THE NATURE OF THE CASE.

A. Constitution and Statutes

Section 1, Article VIII, Constitution of Virginia provides that the General Assembly shall provide a system of free public elementary and secondary schools for all children of school age of the Commonwealth; and Section 3 directs that the legislature shall ensure that textbooks are provided at no cost to each child attending public school whose parent is financially unable to furnish them.

Sections 22-295 through 22-318.1, Code of Virginia, set forth the scheme of procurement of textbooks, and Section 22-307.1, Code of Virginia,

authorizes and encourages each School Board to establish a textbook rental system.

B. The Proceedings Below

The stipulated facts offered in the Circuit Court of Prince William County, Virginia established that the Appellee has a child who attended and used textbooks in the Appellant's school system for the year 1977-78: that the Appellant has, in accordance with the law, established a textbook rental system; that Appellee was responsible for and financially able to pay the textbook rental fee but refused to pay same claiming that the rental system was unconstitutional in that it violated her rights and those of her son to have a free public education. The Circuit Court awarded judgment to Appellee against Appellant for the

textbook rental fee. Finding no reversible error, the Supreme Court of Virginia refused the petition for writ of error, 219 Va. _____, April 6, 1979 (no opinion).

II.

ARGUMENT

The Case Presents No Substantial Federal Question Not Previously Decided By This Court

Prior to and in Brown v. Board of Education, 347 U.S. 483, 98, L.Ed. 873, 74 S.Ct.686 (1954), this Court recognized the importance of education in our Democratic Society, and ruled that when a state undertakes to provide education, it must be made available to all on equal terms. But there was no requirement in that case, or in any subsequent case, that all facets of education must be provided completely free of charge.

The Court reaffirmed its position that there is not a constitutional right to a free public education in San Antonio School District v. Rodriguez, 411 U.S. 1, 35, 36 L.Ed. 2d 16, 44; 93 S.Ct. 1278 (1973) wherein it said:

> Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation.

In that case, at 411 L.Ed. 2d 41, the Court cited many authorities for the theme of a respect for education in a free society, but in none is there a holding that the United States Constitution requires or provides for the requirement of a free public education to be provided by either the Federal, State or Local Governments.

Thus, it is crystal clear that there is no constitutional requirement for a free public education. Counsel would submit that if there is no requirement for the education itself, there can be no requirement for the materials used therein, i.e., textbooks and materials.

The Appellant also asserts that the Virginia textbook rental system is in violation of the Equal Protection Clause of the Fourteenth Amendment, which guarantees that all people similarly situated will be treated alike by the State.

This argument constitutes "nothing less than a direct attack on the way in which [the Commonwealth of Virginia and Appellee have] chosen to . . . disburse state and local tax revenues." San Antonio School District v. Rodriquez, 411 U.S. 1, 40 (1973)

The legislation at issue here falls squarely within the social and economic areas of concern left to the states to address and resolve. Accordingly, the traditional standard of review must be applied in analyzing the Appellant's equal protection claim. See Rodriquez, supra; Dandridge v. Williams 397 U.S. 471 25 L.Ed. 2d 491, 90 S.Ct. 1153 (1970). That standard was succinctly set forth by this Court in McGowan v. Maryland, 366 U.S. 420, 425-26 6 L.Ed. 2d 393, 81 S.Ct. 1101 (1961):

> Although no precise formulas have been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that,

> in practice their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

It cannot be disputed that the State and her localities possess only a finite amount of financial resources to allocate among the many and varied worthwhile and necessary services they provide to the citizens of this Commonwealth. The problems inherent in providing these services are legion and, most appropriately, must be resolved by our elected officials, Maher v. Roe, 432 U.S. 464, 53 L.Ed. 2d 484, 97, S.Ct. 2376 (1977). Education is just one of the services competing for these limited resources. The providing of education itself gives rise to a multitude of problems and questions which must be addressed and resolved by our State and Local legislative

bodies. As stated by the Court in Rodriguez, supra, at 42:

> Education, perhaps even more than welfare assistance, presents a myriad of 'intractable economic, social, and even philosophical problems.' Dandridge v. Williams, 397 U.S. at 487. The very complexity of the problems of financing and managing a statewide public school system suggests that 'there will be more than one constitutionally permissible method of solving them,' and that, within the limits of rationality, 'the legislature's efforts to tackle the problems' should be entitled to respect. Jefferson v. Hackney, 406 U.S., at 546-47.

The Commonwealth of Virginia and Prince William County "has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program." Shapiro v. Thompson 394 U.S. 618, 633 22 L.Ed. 2d 600, 89 S.Ct. 1322 (1969)

Finally the Appellee points to one Section of the Virginia Constitution, Section 1, Article VIII, which directs that the legislature shall provide for a system of free public schools, which she asserts includes furnishing textbooks at no expense.

This same argument was made before the trial court and in the petition for writ of error to the Supreme Court of Virginia. Both courts rejected the argument.

One basis for their rejection must have been the fact that Section 1 of Article VIII must be read in conjunction with Section 3 of Article VIII, which requires free textbooks to be furnished only to a student "whose parent or guardian is financially unable to furnish them." (emphasis added)

Thus, the Virginia Constitution itself resolves the question the Appellant has raised. The Virginia Supreme Court is the ultimate expositor of Virginia law and this Court is bound by their construction except in extreme circumstances which are not present here. Cf. Mullaney v. Wilbur, 421 U.S. 684, 44 L.Ed. 2d 508, 95 S.Ct. 1881 (1975). This Court should not undertake to "reformulate Article VIII, Section 3 of the Virginia State Constitution," as Appellant prays for on page 19 of her jurisdictional statement, as this would violate the long-established rules of this Court.

Based upon the foregoing, Counsel submits, it is crystal clear that there is no new substantial federal question involved in the appeal. As this Court has ruled on numerous occasions, the

issues involved are to be left to the individual State to resolve. The appeal should be dismissed.

III.

CONCLUSION

Wherefore, Appellee respectfully submits that the question upon which this cause depends has been previously decided by this Court, and is so unsubstantial as not to need further argument. Appellee respectfully moves the Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in the Supreme Court of Virginia.

Respectfully submitted,

E. Ralph Coon, Jr.

Craig D. Johnston
Craig D. Johnston
Counsel for Appellee

PROOF OF SERVICE

I hereby certify that three copies of the foregoing Motion to Dismiss or Affirm were mailed, postage prepaid, to Antoinette Foster, Appellant, pro se, P. O. Box 1416, Manassas, Virginia, this 24 day of July, 1979.

E. Ralph Coon, Jr.

Craig D. Johnston
Counsel for Appellee

E. Ralph Coon, Jr.
Craig D. Johnston
Coon & Johnston
P. O. Box 530
Manassas, Virginia 22110
Counsel for Appellee